of *Heaven et al.*, *Anderson*, *Clossick* or *Poncet et al.*" as applying to claim 42. In fact, neither *Heaven et al.*, *Anderson*, *Clossick* nor *Poncet et al* disclose, teach or suggest, let alone anticipate the presently claimed invention.

U.S. Patent No. 5,318,528 to *Heaven et al.* describes a steerable surgical device including an inner tubular member and an outer tubular member surrounding the inner tubular member. A distal end of the inner tubular member and/or the outer tubular member is pre-bent in a curved configuration. A distal end of the device can be oriented in a desired direction by rotating the inner and outer tubular members with respect to each other. A tool such as an arthroscopic grasper can be mounted on a distal end of the inner and/or outer tubular members and the tool can be oriented in any desired direction simply by rotating one of the tubular members with respect to the other tubular member.

Heaven et al. does not disclose, teach or suggest, let alone anticipate a surgical clamp including an elongate, one-piece, malleable hollow shaft. In contrast, *Heaven et al.* discloses an arthroscopic grasper including having the inner tubular member and/or the outer tubular member pre-bent in a curved configuration. A distal end of the device can be oriented in a desired direction by rotating the inner and outer tubular members with respect to each other. The arthroscopic grasper of *Heaven et al.* relies on the multiple pieces described above to allegedly achieve a steerable device. The body assembly or shaft of *Heaven et al.* is not a one-piece shaft.

Further, *Heaven et al.* does not disclose, teach or suggest, let alone anticipate a tissue clamp assembly including first and second movable opposable jaws mounted at the distal end adopted to grasp, secure and occlude body tissue and conduits.

U.S. Patent No. 5,336,221 to *Anderson* describes a method and apparatus for applying optical or other thermal energy to tissue using a clamp. The energy is supplied at a frequency that biologically welds or fuses tissue. A material that is transmissive to the energy treatment frequency is embedded in one or more jaws of the clamp and engage the tissue during the tissue fusion process. The transmissive material has a thickness selected to insure that the energy source is spaced at the proper distance from the tissue so

that the tissue receives the proper amount of energy for sealing. The transmissive material holds the tissue in the jaw to maintain the edges of the tissue in tight approximation. The energy may be coupled to the clamp by one or more optical fibers. These fibers are recessed in or placed adjacent to the jaw at a specified distance from the surface of the transmissive material and directs treatment energy through the transmissive material to weld the edges of the tissue together

The sole mention of the conduit in *Anderson* is in two sentences set forth below:

- "Referring to FIG. 1, there is shown an apparatus 10 for tissue welding using a clamp 12 that is fed optical energy through conduit 14 from energy source 16."
- "Energy from the energy source 16 is fed through conduit 14 using optic media 28a-28b and 28c-28d (FIG. 2B) such as a fiber optic cable having proximate and distal ends."

Thus, it is respectfully not understood how *Anderson* discloses, teaches or suggests, let alone anticipates the presently claimed invention.

U.S. Patent No. 5,254,130 to *Poncet et al* describes a surgical device including a tubular housing and a first elongate member extending through the housing. Part of the distal segment of the first elongate member is made of a super elastic material such that the distal segment assumes a first shape when extended from the longitudinal bore and a second shape when withdrawn into the bore. The surgical device further includes a second elongate member extending parallel to the first elongate member so that it is moved by the first elongate member. When the first elongate member changes from its first to its second shape and vice versa, the second elongate member is rotatable relative to, and substantially about, the axis of the first elongate member. An operating head is secured to the distal segment of the second elongate member so that the operating head is moved with the second elongate member when the first elongate member changes from its first to its second shape and the operating head can be rotated by the second elongate member substantially about the axis of the first elongate member.

Poncet et al. does not disclose, teach or suggest, let alone anticipate a surgical clamp including an elongate, one-piece, malleable hollow shaft. In contrast, *Poncet et al.* first elongate member made of a super elastic material that assumes a first shape when extended from the longitudinal bore and a second shape when withdrawn into the bore.

U.S. Patent No. 4,945,920 to *Clossick* describes torqueable and formable biopsy forceps. The biopsy forceps include a handle portion having a distal end, an elongate tubular torqueable and formable body assembly and a forceps assembly. The tubular body assembly includes a coil spring guide wire having a proximal portion and a distal portion extending between the handle portion and the forceps assembly. A first tubing or covering over the proximal portion of the coil spring guide wire extends from the handle portion towards the forceps assembly. The first tubing has a distal end and a proximal end, and has a high resistance to twisting and a high transmission of torque applied thereto. A second tubing or covering of formable material is received over and tightly engages the distal portion of the coil spring guide wire, and imparts a high formability to the distal portion of the coil spring guidewire. The second tubing or covering has a distal end, a proximal end and extends rearwardly from the forceps assembly to a distal end of the high torque transmitting first tubing or covering. The second tubing or covering overlaps the distal end of the first tubing and defines a tip portion of the elongate torqueable and formable body assembly.

Clossick does not disclose, teach or suggest a surgical clamp including an elongate, one-piece, malleable hollow shaft. In contrast, *Clossick* discloses a biopsy forceps including a multi-piece torqueable and formable body assembly or shaft. The body assembly includes a coil spring guidewire, a first sleeve and a second sleeve. The first sleeve, also referred to as the torqueable tubing, is preferably formed by three layers of tubing, an inner plastic extrusion, a tubular envelope of braided material and an outer plastic extrusion. The biopsy forceps of *Clossick* rely on the multiple pieces described above to allegedly achieve a shaft that is torqueable and formable. The body assembly or shaft of *Clossick* is not a one-piece shaft.

Further, *Clossick* does not disclose, teach or suggest a tissue clamp assembly including first and second movable opposable jaws mounted at the distal end adopted to grasp, secure and occlude body tissue and conduits. The biopsy forceps of *Clossick* are inserted through a blood vessel into a heart chamber, to capture a tissue specimen.

It is thus seen that neither *Heaven et al.*, *Anderson*, *Clossick* nor *Poncet et al* disclose, teach or suggest, let alone anticipate the presently claimed invention. The Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date 30 Oct 2002

By _____
Paul E. Schaafsma
Registration No. 32,664
Attorney for Applicant

FOLEY & LARDNER
One IBM Plaza
330 North Wabash
Suite 3300
Chicago, Illinois 60611
Telephone: (312) 755-2610
Facsimile: (312) 297-1925